



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

08-27-07

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1.07-01-022

Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.

Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.

A.06-09-006

Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates.

A.06-10-026

Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.

A.06-11-009

Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.

A.06-11-010

Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan.

A.07-03-019

**OPENING BRIEF OF THE UTILITY REFORM NETWORK, NATIONAL
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	AN EFFECTIVE LOW INCOME RATE ASSISTANCE PROGRAM SHOULD INCLUDE A PERCENTAGE DISCOUNT OFF THE TOTAL BILL.....	2
A.	First and Foremost a LIRA Program Must Ensure Affordability	3
B.	A Flat Discount Disadvantages Customers with Large Household Size.....	6
C.	A Percentage Discount is Equitable.....	7
D.	Statutory Language Supports a Percentage Discount	10
E.	Commission Precedent Supports a Percentage Based Discount.....	11
F.	A Percentage Discount Is Not Confusing for Customers	13
III.	EFFECTIVE CONSUMER OUTREACH IS A NECESSARY TOOL TO AVOID CUSTOMER CONFUSION AND FRUSTATION OVER CHANGES IN RATE DESIGN.....	15
IV.	COMPREHENSIVE DATA COLLECTION IS A NECESSARY TOOL TO ANALYZE THE IMPACT OF A NEW CONSERVATION RATE DESIGN ON VULNERABLE RESIDENTIAL CUSTOMERS.....	18
A.	Joint Consumers' Data Collection Proposal Is Necessary To Gauge The Impact Of Cal Water's New Rate Design On All Residential Customers, Especially Low- Income Customers	19
B.	Joint Consumers' Data Collection Proposal is Reasonable	21
V.	CONCLUSION.....	23

TABLE OF AUTHORITIES

Statutory Authority

Cal. Pub. Util. Code §739.1.....	3
Cal. Pub. Util. Code §739.8.....	3, 8, 10, 12
Cal. Pub. Util. Code §871.5(a).....	3
Cal. Govt. Code §11135.....	16

Other Authorities

AB 2815 (Stats 1992 ch. 549).....	10
Water Action Plan, California Public Utilities Commission, December 15, 2005....	1

Commission Decisions

D.89-09-044, 32 CPUC2d 406.....	13
D.94-12-049, 58 CPUC2d 278, 1994 Cal P.U.C. LEXIS 1067.....	4
D.96-10-066, 68 CPUC2d 524, 1996 Cal PUC LEXIS 1046	4
D.02-01-034, 2002 Cal PUC LEXIS 35.....	12
D.04-08-054, 2004 Cal PUC LEXIS 388.....	11
D.05-05-015.....	12
D.06-10-036.....	12
D.06-11-053.....	12

I. INTRODUCTION

The Utility Reform Network, the National Consumer Law Center, the Disability Rights Advocates and the Latino Issues Forum (herein referred to collectively as “Joint Consumers”) file this Opening Brief pursuant to Rules of Practice and Procedure Rule 13.11 and the Administrative Law Judge’s electronic ruling dated August 3, 2007.

The Joint Consumers recognize the importance of this proceeding and its implications for the consumers of all investor owned utilities regulated by the Commission. While on one hand the goals of conservation and affordability may seem to be in conflict, this need not be the case. Joint Consumers believe that the Commission can and must adopt policies and regulations in this docket that will allow both goals to be met. In this phase of the proceeding, Joint Consumers have focused on very specific issues in an attempt to mitigate the impact of a conservation rate design on the most vulnerable consumers of Park, Suburban and Cal Water. Joint Consumers support the implementation of an effective and forward-looking conservation rate design. However, this must be coupled with an effective low income rate assistance program that ensures affordability of an essential service, strong consumer education and outreach to avoid confusion and frustration, and comprehensive data collection to analyze the impact on residential customers. Without these safeguards in place, when the new rate design goes into effect the Commission runs the risk of failing to meet its affordability goal, thereby denying thousands of consumers access to safe drinking water sources.

II. AN EFFECTIVE LOW INCOME RATE ASSISTANCE PROGRAM SHOULD INCLUDE A PERCENTAGE DISCOUNT OFF THE TOTAL BILL

The Commission's Water Action Plan has six main objectives. One of those objectives is to "Assist Low Income Ratepayers."¹ In many ways, this objective is the linchpin to achieving many of the other Water Action Plan objectives. Until the Commission and the utilities are confident that all the ratepayers in their service areas have access to adequate and affordable water sources, many of these other programs that may require rate increases such as conservation, water quality and infrastructure cannot move forward. Suburban is one of the last Class A water utilities to implement a low income rate assistance program. However, Suburban is not far behind many of the other Class A utilities whose programs were approved only in the past two or three years and have yet to be tested or analyzed.

In this proceeding, Suburban and DRA filed a settlement agreement requesting the Commission approve a LIRA program for Suburban.² Joint Consumers are proposing changes to the LIRA program contained in the Suburban and DRA settlement. Specifically, Joint Consumers are suggesting an alternative method of calculating the discount given to qualifying customers. Joint Consumers are not requesting changes to any other aspect of the Suburban/DRA LIRA proposal.

The Suburban/DRA proposal would provide customers who qualify for a low income discount a reduction to their bills of a flat amount totaling \$6.50. In contrast, Joint Consumers propose that the discount be calculated as a percentage reduction in the customer's total bill. Joint Consumers propose a 15% discount in light of the

¹ California Public Utilities Commission, *Water Action Plan*, December 15, 2005 at p. 4.

² *Motion of the Division of Ratepayer Advocates and Suburban Water Systems to Approve Settlement Agreements*, April 24, 2007 (*DRA/Suburban Settlement Motion*).

DRA/Suburban LIRA Settlement's claim that \$6.50 is loosely based on 15% of an average customer bill.³

A. First and Foremost a LIRA Program Must Ensure Affordability

In order to evaluate the effectiveness of a LIRA program, the Commission must be clear on the goals and priorities for the program. Joint Consumers submit that the main goal and focus of a LIRA program should be to ensure affordability of an essential service.⁴ Whether applied to energy, telecommunications or water customers, this Commission and the Legislature have recognized that access to these vital services by the greatest number of customers benefits society as a whole. The Legislature was very clear when it stated in what is now Public Utilities Code Section 739.8,

(a) Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.

It also instructive to note that similar language has been used by either the Legislature or the Commission for other industries as well. For example, Public Utilities Code Section 871.5(a) states,

a) The offering of high quality basic telephone service at affordable rates to the greatest number of citizens has been a longstanding goal of the state.

And Public Utilities Code Section 739.1 states,

f) It is the intent of the Legislature that the commission ensure CARE program participants are afforded the lowest possible electric and gas rates and, to the extent possible, are exempt from additional surcharges attributable to the energy crisis of 2000-01.

³ *Settlement Agreement Between the Division of Ratepayer Advocates and Suburban Water Systems on Low Income Ratepayer Assistance Program Issues*, April 24, 2007 at Section 3.1. (*DRA/Suburban LIRA Settlement*)

⁴ Exh 5, Testimony of Robert Finkelstein, TURN, at p. 8.

The Commission has reaffirmed these statutory mandates. Regarding the CARE program, the Commission has also stated that, “With our restructuring proposal, we want to ensure that all ‘California consumers, including our low-income citizens, enjoy universal access to a basic, affordable and up-to-date package of electric services’.”⁵ Regarding telecommunications, the Commission is just as clear on its goal, “Today's decision reaffirms the Commission's commitment to universal service by ensuring that residential basic telephone service be made available throughout California, and that the rates for such service remain affordable.”⁶

In support of their LIRA proposal, DRA and Suburban place undue emphasis on the Commission’s conservation goals, at the expense of affordability. Suburban suggests that a percentage based discount is bad policy because it provides discounts to customers with high bills theoretically “rewarding” customers for using more water.⁷ This position ignores the realities of indoor water use and reflects the fact that conservation goals can be better addressed by lowering the fixed service charge for everyone.

The fact that the discount provides relief to customers with higher bills who are least able to pay is exactly on point given the overriding goal of ensuring affordability. This is especially the case knowing that low income households generally do not have swimming pools or extensive landscaping that would drive up water consumption. Instead, if a LIRA program participant has a high bill it is likely due to a large number of people in the household. As discussed below, having more people in the household is not only a driver for consumption but also a barrier to conservation. It would be patently

⁵ D.94-12-049, 58 CPUC2d 278, 1994 Cal P.U.C. LEXIS 1067, 3, citing to R.94-04-031/I.94-04-032 at p. 56.

⁶ D.96-10-066, 68 CPUC2d 524, 1996 Cal PUC LEXIS 1046, 1.

⁷ Exh 3, Further Testimony of Robert Kelly, Suburban, at p. 7; ⁷ Exh6, DRA Report, at p.2-2.

unfair and unreasonable to attempt to use the low income discount to extract conservation from households through a penalty of a lower discount when the utilities admit that low income households with larger bills have a limited ability to reduce water consumption.⁸

Even more importantly, the position of the utilities and DRA points out the key fact: the best way to promote conservation is to reduce fixed service charges for all customers. After all, their proposal is to have a “fixed discount,” which is exactly identical to reducing the fixed service charge for low-income customers by \$6.50. Joint Consumers agree with DRA and the utilities that such a reduction sends a positive conservation signal. This is exactly the reason why TURN (as well as many other parties in different proceedings) has promoted lower service charges for all customers. Reducing the service charge *for all customers* by \$6.50 (and increasing the quantity charge correspondingly) would be the best way to promote conservation. The problem is that DRA and the utilities are seeking to use the low-income discount as the vehicle for achieving conservation goals, with the resulting mismatch undermining the relief provided to low-income customers.

The purpose of the low income assistance program – bill affordability – should not be distorted by reducing the fixed service charge only for low income customers. Low income customers should get a bill discount designed to be as effective as possible in maintaining affordability and thereby ensure public health and habitable housing. More generally, all customers should get a reduction in service charges to promote conservation as part of an effort to pursue conservation goals for all ratepayers (through lower service charges, higher quantity charges or additional tiers with wider differentials). It is also appropriate to provide the tools for low income customers to

⁸ DRA/Suburban Settlement Motion at p. 6; RT, Kelly, at p. 73:5-20.

reduce water consumption through long-term measures such as subsidized fixture programs, subsidized leak detection, repair programs, and consumer education. But for purposes of serving the primary goal of the LIRA discount – affordability – the Commission should adopt a bill discount approach rather than a fixed LIRA discount.

B. A Flat Discount Disadvantages Customers with Large Household Size

It is well supported that the number of people living in a household is a significant factor in water consumption.⁹ TURN’s testimony states that household size affects, at a minimum, indoor water use by virtue of the fact that more people in the house result in additional showers, additional toilet flushes, and additional need for water to clean dishes and clothes.¹⁰ Indeed, Suburban and DRA explicitly state that, “Although [low income/high occupancy households] may make efforts to conserve, their water use is going to be higher just based on the number of people living in each house.”¹¹ Other utility witnesses confirmed the principle that household size is a driver for water consumption.¹²

The correlation between household size and indoor water usage is critical. Low income families with more people in the household will have higher bills than smaller low-income households. These higher water bills are not caused by the discretionary use of water for swimming pools and elaborate landscaping, but rather by the use of water for

⁹ There is also a link between household size and income level generally. DRA/Suburban Settlement Motion at p. 6, “Within its service areas Suburban has several communities with low-income residents and a high number of residents per household.” Exh 5, Finkelstein at p. 4, 9.

¹⁰ DRA/Suburban Settlement Motion at p. 9.

¹¹ *Id.* On the witness stand, Suburban witness Robert Kelly confirmed the link between household size and water usage as described in the DRA/Suburban Settlement Motion, R.T. Kelly at p. 73:5-20.

¹² R.T. , Jackson, at p. 208:1-2.

household consumption and hygiene.¹³ Thus, as Suburban acknowledges, while these households may make efforts to conserve, their water usage will be high regardless of those efforts. It is unfair to try and extract conservation from a low income, large household by providing a lower effective LIRA discount for high bills.

To be clear, Joint Consumers are not suggesting that there be a threshold for a definition of household size. Indeed, to suggest there must be a minimum number of people misses the point. As TURN's witness stated during his cross examination, "I don't think the specific break point number matters so much as acting consistently with the correlation that the more people in the house, the higher the bill is going to be."¹⁴ As demonstrated below, the usage does not have to be significantly above 20 Ccf before a flat rate discount penalizes low income customers. It is not necessarily the size of the household but instead the amount of the bill that causes the flat discount to be unfair to low income consumers whose consumption levels tend to be relatively inelastic. Even if Joint Consumers were interested in proposing a "large household" definition it is clear that none of the utilities, including Suburban, have adequate tracking and data to provide reliable criteria on which to base any such definition.¹⁵

C. A Percentage Discount is Equitable

The percentage discount format has considerable benefits for the customer. Most importantly, the percentage discount is equitable. It provides the same relative discount,

¹³ Cal Water witness Dave Morse notes that it is unlikely low income customers would have trouble paying their bills due to high or any landscape use. R.T. Morse at p. 424:25-28.

¹⁴ R.T. Finkelstein at p. 100:22-25.

¹⁵ In discussions with Suburban, it became clear that the company has little research and data on the demographics of its customers beyond simple census data or detailed usage information relevant to this inquiry. The attorney representing Suburban conducted cross examination of Mr. Finkelstein on whether Mr. Finkelstein had performed any analysis on the usage patterns of Suburban's customers, but Suburban has offered no evidence to refute Mr. Finkelstein's reasonable assumptions. RT at p. 88-89

in this case 15%, to qualifying customers regardless of the amount of the bill. While the dollar amount will fluctuate with the size of the bill, every low income customer is given the same relative benefit. In a flat discount scenario customers are not treated equally; despite being given the same dollar amount discount (\$6.50) the discount would constitute a larger percentage of the bill for low income customers with lower usage, resulting in a larger relative discount. As the bill goes up, the flat discount amount becomes an ever-shrinking percentage discount of the bill.

As discussed above, the main goal for a low income water program should be to ensure affordability of an “adequate supply of healthful water.”¹⁶ For larger households, an “adequate supply” is going to be a larger amount than it is for smaller households. To ensure affordability of an “adequate” supply for the larger households the customers who demonstrate financial hardship should be given a relatively larger discount on their water bill. A percentage discount achieves such an outcome; a flat discount does not.

The difference between a percentage discount or a flat fee discount on low income, low-usage households is minimal. However, as the water bill increases, the differential between the two types of discounts increases to the detriment of the customer. As Mr. Finkelstein states, “Simple math can provide an example. If a bill is \$50, reducing the amount by \$6.50 is a 13% discount. However, if the bill is \$100, reducing the amount by \$6.50 means only a 6.5% discount.”¹⁷

DRA’s testimony contains a chart that demonstrates the minimal impact this issue has on customers with average consumption.¹⁸ While the low usage customer obtains a small benefit from the use of a flat discount as compared to a percentage discount, the

¹⁶ Public Utilities Code §739.8(a)

¹⁷ Exh 5, Finkelstein, at p. 4-5.

¹⁸ Exh 6, DRA, at p. 2-3.

difference amounts to only \$1.07 in dollar terms. As discussed below, this small benefit does not outweigh the burden suffered by low income, high-usage customers under the flat discount. Indeed, the impact on a customer with average consumption is irrelevant. As Suburban witness Kelly testified, it is only those customers with high use or low use that will be most affected by the new rate design.¹⁹

Using DRA's chart to apply the different discount proposals to higher usage profiles demonstrates the burden more vividly:

Comparison of Tier 2 5/8" x 3/4" meter customers in the San Jose Hills Service Area Monthly figures used		
	DRA/Suburban Proposed Settlement	Intervnors' Proposal
Average summer usage for 5/8"x3/4" meters ⁽¹⁾	30 Ccf	30 Ccf
Quantity/Variable Charges (\$/Ccf)	\$1.51 Ccf	\$1.51 Ccf
Quantity/Variable Charges	\$45.30	\$45.30
Meter Charge	\$9.23	\$9.23
Average Bill (AB) ⁽²⁾	\$54.53	\$54.53
Proposed Discount as dollars ⁽³⁾	\$6.50	\$8.17
Proposed discount as % of Average Bill	11.92%	15.00%
Total Avg Bill for Low Income Customer ⁽⁴⁾	\$48.03	\$46.36
Effective Unit Rate ⁽⁵⁾	\$1.60 Ccf	\$1.54 Ccf
1- See, DRA/Suburban Settlement filed April 24, 2007, Attachment 2, Page 2 2- Average summer usage as calculated as monthly rate for 5/8" x 3/4" meter plus average usage for 5/8" x 3/4" meters times Tier 1 rate of \$1.35 3- DRA's proposed discount as filed April 23, 2007 in Proposed DRA/Suburban Settlement 4- Average bill minus proposed discount 5- Total average bill for low income customer divided by usage		

In this scenario, calculating for a higher usage of 30 Ccf demonstrates that the flat discount amount becomes disadvantageous quickly, resulting in only an 11.92% discount and a bill that is \$1.67 higher than under the 15% discount. While \$1.67 may seem insignificant, these figures are calculated using only average summer usage and do not take into account large household size, which, as discussed below, is a significant driver

¹⁹ R.T. Kelly at p. 74:18-27.

of water consumption and one that will have a limited response, at most, to conservation signals. It does not take a significant increase in water consumed to diminish the benefits of the discount. The difference between the two proposals becomes greater as the bill amount increases.

D. Statutory Language Supports a Percentage Discount

Public Utilities Code Section 739.8 sets forth the statutory authority and direction for the Commission's low income water programs. The statute's first and foremost consideration is access and affordability to an adequate supply of healthful water. The Legislature clearly sees affordability as an important purpose of any low income program adopted by the Commission.

The statute at subsection (c) also states, "The commission shall consider and may implement programs to assist low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals." The Legislative intent of this sentence is less clear.

It is important to interpret the statutory language in the context of the legislation that contained what is now Section 739.8 (c). AB 2815 (Stats 1992 ch. 549) added several sections to the Public Utilities Code related to water rate design and conservation programs. The Legislature gave the Commission authority to set rates for all water utility customers in a way that promotes conservation and to establish conservation programs paid for through ratepayer surcharges. In light of the likely rate increases for all water utility customers as a result of these conservation measures, the Legislature ordered the Commission to consider low income programs to offset some of those increases. The language certainly does not mandate that the low income discount program itself produce

conservation benefits. Instead the low income program allows the Commission to “provide appropriate incentives and capabilities to achieve water conservation goals” through *the rest of the ratepayers* without unduly adding to the burden already faced by those low income customers. The statute merely ensures that the utility can put conservation programs in place while low income programs protect vulnerable consumers. The Commission should not read the statute to directly require the low income program to have a conservation component or to penalize low income customers that do not conserve.

E. Commission Precedent Supports a Percentage Based Discount

Suburban is one of the last water companies to implement a low income assistance program. Two water companies have the percentage discount structure. In the San Jose Water Company decision, the Commission specifically acknowledged that the adopted 15% discount “will provide larger benefits for larger households” and approved the program as reasonable.²⁰ Interestingly, the Commission rejected San Jose Water’s proposal for a flat discount amount in favor of DRA’s (then ORA) proposal of a percentage based discount. While there is limited discussion in the Decision on this issue, it is clear that affordability for large households was a consideration in adopting San Jose’s low income program.

An earlier case adopting a low income program for what is now Golden State Water is also instructive. While the Commission states that the low income program adopted for two regions within Golden State’s service area is not intended to serve as a model for other utilities, that decision includes discussion that is just as applicable here. Most relevant is the discussion noting that ORA did not demonstrate that its proposal

²⁰ D.04-08-054, 2004 Cal PUC LEXIS 388, 19

would change low income customer behavior to achieve any conservation savings, particularly among large households with larger water needs. In the end it declared that the percentage discount was “reasonable, even-handed low income rate relief” and adopted the program for Golden State.²¹

The Commission has also approved a flat rate discount for some water LIRA programs.²² In each of those instances, the Commission focused on the potential conservation benefits to the detriment of affordability.²³ In the Golden State Decision, the Commission rejects ORA’s flat discount proposal, in part, because ORA did not demonstrate the specific conservation savings. In subsequent decisions, the Commission approves these flat rate programs despite a similar failing. Many of these decisions have little to no analysis of the discount method but instead uncritically approve a flat discount as consistent with previous decisions.²⁴ Even where the decisions have some discussion, certainly none of them include an analysis of the actual impact on customer behavior or proven conservation results from a flat discount. Indeed, such an analysis may be very difficult to present. As DRA witness Olea stated on the stand, it is almost impossible to attribute the “why” of a certain usage pattern or a change in water consumption to any

²¹ D.02-01-034, 2002 Cal PUC LEXIS 35, 19

²² For example, D.06-10-036 (Park Water Company); D.05-05-015 (San Gabriel Valley Water Company); D.06-11-053 (California Water Service Company).

²³ See, the discussion in D.05-05-015 at p.5 “By lowering the readiness-to-serve charge only, there is no adverse incentive to use water unwisely. Conversely, applying a discount to the total bill and/or to the quantity rate, would not promote conservation. Hence, we find San Gabriel’s proposal to discount the service charge only reasonable and consistent with § 739.8.”

²⁴ In many of these cases the surcharge methodology generated more discussion by the Commission. Interestingly, in a recent decision, the Commission found a volumetric surcharge structure appropriate for many of the same reasons TURN is now advocating for a percentage discount,

CWS argues that a volumetric surcharge is more equitable than a fixed rate as it ties the surcharge to consumption level where customers with higher water usage would pay a higher surcharge. Under a fixed rate surcharge, a residential customer who is slightly over the LIRA eligibility requirements would pay the same as a large industrial user. Assessing a volumetric surcharge to support low-income programs does not conflict with our Water Action Plan. D.06-11-053 at 8.

single factor.²⁵ Prioritizing unknown and unquantifiable conservation benefits over proven goals of affordability would not only be a disservice to low income households, it would be a bad public policy.

F. A Percentage Discount Is Not Confusing for Customers

As discussed in TURN's testimony, the percentage discount will be easy for the customer to understand. It also should entail similar amounts of effort and resources for Suburban to implement as a flat discount.

The argument that a percentage discount will be confusing to ratepayers is a red herring. The Commission has already declared a percentage based discount straightforward when describing the electric industry's CARE program,

This program is simple -- simple to understand, simple to explain, simple to compute. Simplicity of understanding and explanation will facilitate outreach and explanation by customer service departments and result in a quick start to this program. It confers a noticeable bill decrease on participating customers.²⁶

²⁵ RT at p. 17

10 Q Would you explain why usage in Zone 3 of th
11 Whittier/La Mirada District is relatively low when
12 compared to average usage in Zones 1 and 2?

13 A I would like to defer the question to

14 Ms. Olea.

15 WITNESS OLEA: A I would like to say that with
16 regards to the usage in Suburban, that would be
17 applicable to any other consumption pattern. There is
18 only a certain amount of whys that we can answer. We
19 can look at the numbers, and we can say that this is the
20 usage pattern. Then we can look at additional
21 information and try to infer from the consumption why
22 the usage pattern presents itself as it does. But to
23 say that for a given reason would be to attach cause and
24 effect to a relationship, that we don't know what is
25 actually cause and effect.

²⁶ D.89-09-044, 32 CPUC 2nd 406, 411.

Many of the same customers will qualify for both CARE and Suburban's LIRA program and those customers will already be used to a percentage off discount calculation, so in essence it may be less confusing for those customers instead of seeing an apparently random flat discount amount.

Second, the resources necessary to implement a percentage based discount should be very similar to the resource requirement for a flat discount. This is especially true since Suburban must make changes to their billing system to implement the tiered rates called for under the settlement.²⁷ The incremental cost of making a change when the resources are already in place to make an unrelated change should be minimal. Suburban was quick to point out in cross examination that Mr. Finkelstein did not do a detailed cost analysis to support his statements.²⁸ However, more important for the Commission's purposes is the fact that Suburban presented no cost evidence to support their discount proposal or to refute Mr. Finkelstein's common sense statements that it is reasonable to expect the cost of implementing either discount methodology in the billing system to be about the same.

Suburban also claims that because the dollar amount of the discount will change month-to-month, it will be very difficult to gauge expenses for the utility and therefore the proper surcharge. Once again, the difference between the two proposals is not as great as Suburban would suggest. With both discount proposals, Suburban will have to do some guess work, especially in the first couple of years of the program, as to the subscription rate. If the majority of the program participants have lower than average

²⁷ R.T., Finkelstein at p. 90-91: 26-7.

²⁸ R.T., Finkelstein, at p. 91, 8-25

usage, it should be quite simple to forecast an amount equal to approximately 15% of their bills.

Joint Consumers recognize that there may be some outlier low income customers with huge bills that fluctuate month to month. This is the only customer profile that would make the percentage discount more difficult to implement than a flat discount, but it is also the customer profile most affected by the new rate design. But this too can be taken into account at the time of review, should it appear to be a real problem in practice rather than a rhetorical question. For example, the Commission could explore establishing some reasonable mechanism to allow utilities with a percentage discount LIRA to more easily get reimbursed when their original forecasting was too low.

III. EFFECTIVE CONSUMER OUTREACH IS A NECESSARY TOOL TO AVOID CUSTOMER CONFUSION AND FRUSTATION OVER CHANGES IN RATE DESIGN

As a result of this proceeding, Park, Suburban and Cal Water will all be changing their rate structure to introduce tiered rates. This change will entail a very different looking bill and possibly rate increases or decreases for the customers of these three utilities. In order to avoid both customer confusion and frustration with these changes, the Joint Consumers agree with the Assigned Commissioner that each utility must implement a customer education and outreach plan.²⁹

Although Joint Consumers have not yet reached settlement with either Park or Cal Water on outreach issues, TURN, NCLC, LIF and Disability Rights Advocates have

²⁹ While the parties were directed to include language in their settlements on customer outreach, each settlement's discussion was too high level to be useful. See, March 8, 2007 *Assigned Commissioner's Ruling and Scoping Memo* at p. 4 (Scoping Memo) "The parties shall propose customer education initiatives necessary to implement the settlements, including outreach efforts to limited English proficiency customers. . ."

come to a settlement agreement with Suburban on an outreach plan³⁰ and Disability Rights Advocates has entered into an MOU with Suburban regarding specific accessibility issues and outreach to Suburban's customers with disabilities.³¹ The Suburban/Consumer Settlement covers outreach for both LIRA and rate design messages and sets out the methods of outreach and the timing of the outreach. We would encourage the Commission to apply the requirements contained in the Suburban/Consumer Settlement regarding rate design outreach to the other utilities and the accessibility issues raised in Disability Rights Advocates' separate MOU with Suburban. Joint Consumers will not provide a detailed list of the elements of that settlement in order to avoid being duplicative. However, a few of the key elements include:

- Description and timing of the bill insert, a reference to the insert on the bill itself, and inclusion of TTY information, large type, and a Spanish language explanation and customer service phone number on the bill insert;
- Uses of Suburban's website to post material and information in a clear and conspicuous place and in compliance with the requirements of Cal. Gov. Code §11135;
- Working with community based organizations (CBO), including those addressing the needs of the disability community, on training and education, as CBOs can be a helpful partner in reaching low-income and hard-to-reach customers;
- Coordination of outreach on the new rates with the companies' LIRA outreach, to the extent possible;
- Accommodation for limited English proficient (LEP) customers through distribution of flyers or use of print or airwaves in LEP communities describing the changes in the bill and the capability to provide information in Spanish should an LEP customer calls on the phone and request information about the new conservation rates.

³⁰ *Settlement Between Suburban Water Systems and Disability Rights Advocates, National Consumer Law Center, Latino Issues Forum, And The Utility Reform Network On Customer Education, Outreach, Data Collection And Reporting*, August 10, 2007 (Suburban/Consumer Settlement).

³¹ Exh 8, Testimony of Melissa Kasnitz, DRA.

Park and Cal Water have both expressed a willingness to conduct some type of outreach program.³² Joint Consumers appreciate the utilities' openness to this idea, but the devil is in the details.

One very important detail concerns the ability of Park and Cal Water's Spanish-speaking customers to request and receive information about the new rates in Spanish.³³ While Park has measures in place such as a toll-free number with customer service representatives who speak Spanish and a practice of already translating notices in Spanish,³⁴ Cal Water will have gaps in its ability to communicate with its Spanish-speaking customers in some districts. David Morse has testified that Cal Water's ability to communicate to their Spanish-speaking customers is currently limited to districts with a higher Spanish-speaking population and that, until they have a new call center, some Spanish speaking customers will not be able to communicate with customer service representatives who speak Spanish and many not be able to request additional materials in Spanish.³⁵ Joint Consumers and Suburban, in the Suburban/Consumer Settlement, were able to come to an agreement on a low-cost interim measure to address a similar gap between the likely implementation of the new rates and the implementation of a new IVR system.³⁶ Suburban has agreed to set up a voice mailbox or answering machine that will provide customers with a short message in Spanish on conservation rates and allow Spanish-speaking customers to leave a message to request materials in Spanish.

³² Exh 10, Further Testimony of Ed Jackson, Park, at p.3; R.T. Jackson at pp. 209-216 (Park); Reply of Cal Water to Comments on Revised Settlement, July 6, 2007 at pp. 5-7; R.T. Morse at pp. 352-353; pp. 420-421 (Cal Water).

³³ Both Park and Cal Water have testified that Spanish is the only predominant non-English language in their service territory. R.T. Jackson at p. 210: 2-4, 18-21; R.T. Morse at p.352: 4-10.

³⁴ R.T. Jackson at p.209: 18-28 and at p. 210: 2-16 .

³⁵ R.T. Morse at p. 420: 8-24 and at p. 421: 17-25.

³⁶ Suburban/Consumer Settlement Sections 3.3.6; 3.3.7.

Park and Cal Water have also expressed concerns about implementing additional outreach methods to specifically target Spanish-speaking customers, despite the Assigned Commissioner's emphasis on this issue. Joint Consumers do not believe a single bill insert will be sufficient to reach this population. Again, the Suburban/Consumer Settlement would provide instructive. The parties agreed on a unique solution of distributing flyers to Spanish-speaking neighborhoods in their serving territory.³⁷ This very targeted approach will ensure the message is being delivered in a cost effective manner. TURN urges the Commission and Park and Cal Water to consider this as a viable option.

Joint Consumers and Cal Water are in the process of trying to reach a settlement agreement on outreach issues such as how to serve LEP customers and customers with disabilities, but the outcome of those discussions is uncertain. We did not reach a settlement with Park, not because of fundamental policy disagreements, but more as a result of limited resources and logistics. Therefore, we urge the Commission to order a specific outreach program using the Suburban/Consumer Settlement and the Disability Rights Advocate's/Suburban MOU as a template for the type of detailed outreach necessary for Park and Cal Water customers regarding the new rate design.

IV. COMPREHENSIVE DATA COLLECTION IS A NECESSARY TOOL TO ANALYZE THE IMPACT OF A NEW CONSERVATION RATE DESIGN ON VULNERABLE RESIDENTIAL CUSTOMERS

The Scoping Memo not only explicitly required a customer education component to the settlements, but also required that

³⁷ *Id.* at Section 3.3.5.

“The parties shall propose . . . monitoring programs to gauge the effectiveness of the adopted conservation rate design, and recommendations on how these results will be reported to the Commission.”³⁸

The Joint Consumers have reached settlements with both Suburban and Park on the data collection issue and are still in settlement discussions with Cal Water regarding data collection and reporting.³⁹ However, no settlement agreement with Cal Water is in existence at this point in time. While it is our hope that the Joint Consumers will be able to come to an agreement with Cal Water on these issues, if this does not occur, we urge the Commission to require Cal Water to collect and report the types of data that Suburban and Park have agreed to gather and report. Consistency in the reporting of the effect of these new conservation rate designs among the different utilities is key to a proper analysis of the impacts on residential and low income consumers.

A. Joint Consumers’ Data Collection Proposal Is Necessary To Gauge The Impact Of Cal Water’s New Rate Design On All Residential Customers, Especially Low-Income Customers

The Joint Consumers’ proposal on data collection, as embodied in the settlement agreements reached with Suburban and Park, covers customer usage data as well as data reflecting customer affordability problems, such as arrearage data and disconnections and reconnections.⁴⁰ While Cal Water has agreed to collect the same customer usage data as Park and Suburban, that data will show only part of the picture.⁴¹ Joint Consumers have focused, in particular, on the annual reporting of monthly data on arrearages and the

³⁸ Scoping Memo at 4.

³⁹ Suburban/Consumer Settlement Section 4; *Motion of Park Water Company, National Consumer Law Center, Consumer Federation of California, Latino Issues Forum and the Utility Reform Network to Approve Settlement Agreement (Settlement Agreement Attached)* (Aug. 10, 2007) (Park/Consumer Data Collection Settlement).

⁴⁰ Suburban/Consumer Settlement Section 4; Park/Consumer Data Collection Settlement Section 3.

⁴¹ See, *infra* Section II.E., DRA witness Olea testified that it is very difficult to determine why a customer’s usage pattern has changed making the usage data only partly insightful.

numbers of monthly disconnections and reconnections to capture trends in customer payment history.⁴² This data will likely show the impact of the new rate design on affordability for the most vulnerable customers, but thus far Cal Water's witness has been hesitant to provide meaningful data in this area.⁴³ While there can be fluctuations in the data from month to month, if the variations indicate a trend, this serves as an important indicator that there could be a problem with the conservation rate design.⁴⁴

Cal Water's witness agreed that the Commission, Cal Water and intervenors should be concerned if contemporaneously with the introduction of the rate design there appears to be an increase in disconnects and arrearages.⁴⁵

Cal Water's witness also testified that without trend data on arrearages and disconnections being collected contemporaneously with the introduction of the new rate design, parties concerned about such trends would not know if there was an increase in residential arrearages.⁴⁶ Thus, while the utility claims that its new conservation rate design, "has minimal or, more likely, no increase in bills for low-income customers,"⁴⁷ without the collection and reporting of the arrearage and disconnection data, similar to those data points agreed to by Suburban and Park in the recent settlements with Joint Consumers, there would be no way to know if in fact there are increases in arrearages and disconnections. Furthermore, if these data points are not broken out for LIRA customers (as a proxy for what is happening to low-income customers), there is no way to determine if low-income consumers are disproportionately affected by the new rate design.⁴⁸

⁴² Exh. 16, Testimony of John Howat, NCLC at pp. 3-6.

⁴³ R.T., Morse at p. 350: 27-27 and at p.351: 1-4.

⁴⁴ Exh. 16, Testimony of John Howat, NCLC at p.4

⁴⁵ R.T. at page 427: 26-28 and at page 428: 1-5

⁴⁶ R.T. at page 428: 12-18.

⁴⁷ R.T. at page 350: 12-14.

⁴⁸ Exh, 16, John Howat at pp. 4-5. ____.

B. Joint Consumers' Data Collection Proposal is Reasonable

As described below, the types of data to be collected pursuant to the settlements between the Joint Consumers with Suburban and Park are fairly consistent. According to Cal Water's witness, as an economist, "we always want more information. But there's a cost to information. And we have to be practical, and trade-offs."⁴⁹ However, both Suburban and Park are smaller companies than Cal Water and both have agreed to gather and report data on consumer payment history to which Cal Water has objected.⁵⁰ Park's witness has testified that the data that Park has agreed to gather will be useful in assessing the impact of conservation rates on low-income consumers.⁵¹ As discussed above, Cal Water acknowledges that without the collection of customer payment history data, there would be no way to track whether the implementation of Cal Water's new conservation rate design was having a contemporaneous negative effect on residential customers, especially low-income customers' ability to pay the new water bills. Therefore the benefits of having this data are substantial and outweigh the burden of producing the data which Cal Water has thus far been unable to prove.

The following are the pieces of data covered by the Suburban and Park settlement agreements. Cal Water should also be required to gather and report these data annually as a supplement to the CPUC annual report filed with the Commission. David Morse testified that Cal Water would be willing to provide some of these data points and those items have been bolded⁵²:

⁴⁹ R.T. at p. 427: 1-4 .

⁵⁰ "information about disconnects and customers in arrears to assess whether the proposed rate design is a hardship for low-income customers doesn't apply to water." Morse in R.T. at p. 351: 1-4 .

⁵¹ R.T. at p. 225: 6-9.

⁵² R.T. on p. 423: 17-28 and at p. 424: 1-2.

Data regarding bill payment history:

1. **Annual number of customers in each class**
2. **Monthly number of residential customer accounts (same for LIRA)**
3. Monthly number of residential customer accounts over 30 days past due by account type (same for LIRA)
4. Monthly dollar value of residential accounts over 30 days past due by account type (same for LIRA)
5. Monthly number of disconnection notices generated (same for LIRA) (As a part of Suburban's Cornerstone – Suburban will use best efforts to tract by involuntary disconnections)
6. Monthly number of residential customers that have had service disconnected for non-payment (same for LIRA)
7. Monthly number of residential customers that have had service restored after discontinuance for non-payment (same for LIRA)

Data regarding usage:

1. **Monthly usage in billing units by tier/blocks separated by meter size and customer class (same for LIRA)** (Suburban also separates by zone and service area)
2. **Monthly customer usage for current month of the current year vs prior year, using average customer profiles at different usage levels (with a separate LIRA profile)**
3. **Weather normalized monthly usage data made available to Intervenors, upon request during each GRC proceeding.** (Suburban and Intervenors defer to ph 2)

The ability to gather these data from companies will, in some cases, require companies to modify their systems.⁵³ Thus the data collection agreements vary somewhat. For example, regarding data points 3 and 4 concerning arrearages, Park has agreed to gather and report these data, but Suburban has not and while Park has agreed to make available weather normalized monthly usage data under certain circumstances, Suburban and Intervenors could come to no agreement on this issue. We believe that Cal Water, a much larger company than either Suburban and Park, should be required to gather all the data points listed above. Cal Water serves 500,000 customers in California, thus the impact from their new conservation rates will reach a much broader number of residential customers. Where the data are not reasonably retrievable by the time the new

⁵³ Exh 16, John Howat, NCLC at pp. 5-6.

conservation rates go into effect, there should be some type of interim measure put in place and the requirement that, as soon as practicable, their systems should be modified to gather these exact data.⁵⁴ The company should be required to file reports updating the Commission with their implementation progress.

V. CONCLUSION

Joint Consumers appreciate the willingness of the utilities to discuss the vital matters of outreach and data collection. However, where these discussions have not yet produced concrete and enforceable settlement agreements, Joint Consumers urge the Commission's attention. As discussed above, the details of an outreach and data collection program are crucial to ensuring an effective means to implement and monitor the effects of the new conservation rate design program. Another crucial element to this new rate design for Suburban customers is the proposed LIRA program. This Commission must ensure that affordability is the top priority in designing an effective program that will help all low income consumers in Suburban's territory.

Dated: August 27, 2007

Respectfully submitted,

_____/S/_____
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On Behalf of Joint Consumers

⁵⁴ For example, Mr. Ferraro testified that Cal Water does send notices of disconnection to customers who are at risk of being disconnected for non-payment. (R.T. at 426:1-5). Thus, Cal Water, like Suburban and Park, should at a minimum be required to gather the data listed as #5 above broken out monthly to be reported annually.

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On August 27, 2007 I served the attached:

OPENING BRIEF OF THE UTILITY REFORM NETWORK, NATIONAL CONSUMER LAW CENTER, LATINO ISSUES FORUM AND DISABILITY RIGHTS ADVOCATES

on all eligible parties on the attached lists to **I.07-01-022**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this August 27, 2007, at San Francisco, California.

_____/S/_____

Larry Wong

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